



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for June 17, 2022

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COURT DECISIONS

NONPRECEDENTIAL:

***Castillejos v. Office of Personnel Management*, No. [22-1036](#) (Fed. Cir. June 13, 2022) (SF-0831-21-0145-I-1)**

Mr. Castillejos was a Federal employee from October 1974 until September 1986, and again from April 1987 to August 1992. In 2017, he filed a Board appeal contesting OPM's denial of his application for deferred retirement based on his employment from 1974 to 1986 (*Castillejos III*). An administrative judge affirmed the denial in November 2017 and the appellant filed a petition for review, which remains pending before the Board. In 2020, Mr. Castillejos again applied for an annuity, this time also based on the period from 1987 to 1992. OPM denied the application and Mr. Castillejos filed a new appeal with the Board (the instant case). The administrative judge dismissed the new appeal on collateral estoppel grounds, based on *Castillejos III*, and the initial decision subsequently became the final decision of the Board. On review, the Federal Circuit found that the Board erred in applying collateral estoppel, because there was not yet a final decision in *Castillejos III*. The court also declined to dismiss the appeal on grounds of adjudicatory efficiency, because *Castillejos III* and the new appeal concerned different periods of service. Accordingly, the court reversed the Board's decision and remanded the case for further adjudication.

***Fall v. Merit Systems Protection Board*, No. [22-1428](#) (Fed. Cir. June 14, 2022) (DE-315H-22-0003-I-1)**

Pursuant to 5 C.F.R. § 315.804, the employing agency terminated Mr. Fall's appointment during his probationary period for alleged unsatisfactory performance. On appeal, the Board dismissed the appeal for lack of jurisdiction. The Federal Circuit affirmed, finding that the jurisdictional requirements of 5 C.F.R. § 315.806 were not satisfied because Mr. Fall did not allege discrimination based on partisan political reasons or marital status, and was not terminated based in whole or in part on pre-appointment conditions.

***Carter v. Department of Defense*, No. [22-1305](#) (Fed. Cir. June 14, 2022) (DC-0752-21-0485-I-1)**

In response to the pandemic, the agency initially approved Ms. Carter for Weather and Safety Leave, but subsequently instructed her to complete training for telework and to begin teleworking on January 4, 2021. Ms. Carter did not complete training or begin telework, and the agency removed her for AWOL and failure to follow instructions. On appeal, the Board affirmed Ms. Carter's removal, and the Federal Circuit affirmed. The court noted that the agency's policy provides that telework is normally optional for employees whose duties are not mission-critical, and that Ms. Carter fell in that category. However, the court found that the agency had authority to require Ms. Carter to telework pursuant to its continuity of operations policies.

***Wilson v. McDonough*, No. [21-1498](#) (1st Cir. June 14, 2022)**

On judicial review of a Board decision, the parties disputed whether the appeal was a mixed case, and as a result the case "ping-ponged" between the Federal Circuit and the District of Maine. Ultimately, the district court granted the Government's motion to dismiss the case for lack of jurisdiction and failure to state a claim. On appeal to the First Circuit, the appeals court determined that it was unnecessary to resolve whether the case was a mixed case, and instead found that the appellant was time-barred from litigating in the district court.